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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

**PG&E CORPORATION,
-and-**

PACIFIC GAS AND ELECTRIC COMPANY.

Debtors.

- Affects PG&E Corporation
- Affects Pacific Gas and Electric Company
- Affects both Debtors

* All papers shall be filed in the Lead Case, No. 19-30088 (DM).

Bankruptcy Case
No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**OBJECTION OF TRANS BAY CABLE
LLC TO PROPOSED CURE AMOUNT
IN CONNECTION WITH SPECIAL
AGREEMENT FOR UNMETERED
ELECTRICAL SERVICE**

[Declarations of Michael Blunt and Lenneal Gardner Filed Concurrently Herewith]

[Hearing Date TBD]

Pursuant to Bankruptcy Code section 365(b)(1), Section 8.2(b) of the *Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16, 2020* [Docket No. 6320] (as amended, modified, or supplemented, the "Plan"), and Paragraph 7 of the *Schedule of Executory Contracts and Unexpired Leases to be Assumed Pursuant to the Plan and Proposed Cure Amounts* [Docket No. 7037] (the "Cure Notice"), Trans Bay Cable LLC ("TBC") hereby objects to the assumption of that certain *Special Agreement for Unmetered Electrical Service –*

1 *Limited Exception*, dated August 7, 2017 (together with that certain amendment thereto executed
2 on or about August 21, 2017, the “Special Agreement”),¹ by and between TBC and Pacific Gas
3 and Electric Company (“PG&E” and, together with TBC, the “Parties”), absent payment of the
4 \$270,760.76 cure amount owed to TBC thereunder. In support of this objection, TBC relies on the
5 Declaration of Michael Blunt (“Blunt Declaration”) and the Declaration of Lenneal Gardner
6 (“Gardner Declaration”) filed concurrently herewith.

7 **I. BACKGROUND**

8 **A. The Special Agreement**

9 TBC constructed, owns, and operates a 53-mile direct current electrical transmission cable
10 (the “Transmission Line”) buried in the San Francisco Bay. The Transmission Line extends from
11 a converter station in the city of Pittsburg, CA to a similar converter station in San Francisco, CA.
12 It provides up to approximately 40% of the peak electrical power needs of the city of San
13 Francisco. Blunt Decl. ¶ 3. TBC has two converter stations, one of which is located in Pittsburg,
14 CA (the “Pittsburg Converter Station”) and is connected to PG&E’s electric system at 230kV and
15 the other of which is located in San Francisco, CA (the “Potrero Converter Station” and, together
16 with the Pittsburg Converter Station, the “Converter Stations”) and is connected to PG&E’s
17 electric system at 115kV. *See* Special Agreement, Recitals.

18 TBC’s Converter Stations require electric energy to: (i) support the converter equipment at
19 the Converter Stations (“non-retail power”), and (ii) provide the power needs of the supporting
20 buildings and other non-transmission equipment (“retail power”). *Id.*² When the Transmission
21 Line is energized, retail power is drawn from PG&E’s distribution system. *Id.* When the
22 Transmission Line is not energized, TBC draws retail power from TBC’s on-site diesel generators.

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25 ¹ A true and correct copy of the Special Agreement is attached as Exhibit 1 to the Gardner
26 Declaration. A true and correct copy of that certain *Amendment to Special Agreement for
Unmetered Electrical Service – Limited Exception*, executed on or about August 21, 2017, is
attached as Exhibit 2 to the Gardner Declaration.

27 ² TBC has two retail accounts with PG&E, one for the Pittsburg Converter Station, serviced under
28 PG&E account number 6490430917, and one for the Potrero Converter Station, serviced under
PG&E account number 1592848224. *Id.*

1 *Id.* There is no metering to separately measure the retail energy used at either Converter Station
2 when the Transmission Line is energized (*i.e.*, the existing retail meters at the converter stations do
3 not capture the retail portion of the load). *Id.*

4 Accordingly, the Parties entered into the Special Agreement to set forth a methodology to
5 determine the amounts payable to PG&E in respect of un-metered retail energy consumed by the
6 Converter Stations and other buildings and related equipment that support the Transmission Line.
7 *Id.* The Special Agreement provides, *inter alia*, that each monthly electric bill from PG&E for
8 each Converter Station will include an additional amount for the estimated unmetered usage (the
9 “Monthly Retail Adder”) as calculated in Section 4 of the Special Agreement. *See* Special
10 Agreement §§ 2, 4.

11 To determine the Monthly Retail Adder, the Parties made certain assumptions about TBC’s
12 estimated retail energy use (the “Estimated Retail Demand”), as set forth in detail in Attachment A
13 to the Special Agreement. The Estimated Retail Demand was based on technical drawings and
14 other assumptions about the unmetered retail energy consumption at the Converter Station,
15 including assumptions based on the energy ratings put out by the manufacturers of the equipment
16 that draws retail power at the Converter Stations (*e.g.*, air conditioners). *See id.* §§ 3, 4 &
17 Attachment A.

18 The Special Agreement provides for certain adjustments to be made to the Estimated Retail
19 Demand, ultimately resulting in a “Modified Monthly Energy Usage” estimate for each Converter
20 Station. *Id.* § 4. TBC’s monthly bill for unmetered retail energy (*i.e.*, the Monthly Retail Adder)
21 is calculated by multiplying the “Modified Monthly Energy Usage” by the appropriate current
22 PG&E retail rate, as published in PG&E’s tariffed rate schedule. *Id.* § 4(c). In other words, the
23 Special Agreement provides that the amount TBC owes PG&E for unmetered retail energy is
24 based entirely on estimates of TBC’s retail energy consumption (which estimates do not vary from
25 month to month). The monthly bill is not tied to TBC’s *actual* consumption of retail power.

26 Although the Special Agreement provides an initial estimate of TBC’s retail usage, it
27 expressly contemplates that “[t]he Estimated Retail Demand numbers may change from time to
28 time if there are changes to the unmetered retail loads at either converter station.” *Id.* § 3. Under

1 such circumstances, TBC is to “notify PG&E in writing within thirty (30) days of becoming aware
2 of any material modification to the retail loads at either converter substation.” *Id.* Within 60 days
3 of such notice, the “Parties shall review and agree in writing to updates to the calculation of the
4 Estimated Retail Demand for each or either converter station. This review may require TBC and
5 PG&E to perform a physical review of either converter station, a review of past TBC retail bills,
6 and other appropriate inspections.” *Id.*

7 **B. TBC’s Installation of Meters and Discovery of Overpayments**

8 In or about July 2018, TBC installed four brand new metering units to meter the
9 consumption of the circuits that draw retail energy. Blunt Decl. ¶ 5. TBC was thereby able to
10 directly measure the retail energy consumed by each Converter Station. *Id.* TBC collected a
11 three-month sample of meter readings to ensure accuracy and consistency. *Id.* The meters
12 showed that the Estimated Retail Demand assumed in the Special Agreement significantly
13 overstated TBC’s actual retail energy consumption. *Id.* ¶ 6. Specifically, the meters showed the
14 following actual retail loads for the months of July, August, and September 2018:

Converter Station	Jul-18	Aug-18	Sep-18	Monthly Average
Pittsburg	40,210.50 kWh	38,770.10 kWh	36,260.40 kWh	38,413.67 kWh
Potrero	18,440.20 kWh	18,053.30 kWh	18,273.80 kWh	18,255.77 kWh

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19 See Blunt Decl. Ex 4. A table setting forth TBC’s actual metered retail consumption for each
20 month from July 2018 through April 2020 is attached as Exhibit 4 to the Blunt Declaration.

21 By contrast, the “Modified Monthly Energy Usage” estimates in the Special Agreement are
22 65,474 kWhs for the Pittsburg Converter Station (approximately 70% greater than the average
23 actual monthly meter reading for the three-month period) and 62,681 kWhs for the Potrero
24 Converter Station (approximately 243% greater than the average actual monthly meter reading for
25 the same period). Special Agreement § 4(d).

26 On November 28, 2018, TBC’s Director of Operations, Michael Blunt, emailed a PG&E
27 representative to discuss TBC’s retail load. Blunt Decl. ¶ 9 & Ex. 5. On or about November 29,
28 2018, Mr. Blunt had a phone call with Andrew D’Amico, PG&E’s account representative for the

1 TBC accounts, regarding TBC’s “request to review the unmetered load agreement for our
2 facility.” *Id.* ¶ 10 & Ex. 5. Mr. Blunt explained on that call that TBC’s meter data demonstrated
3 that TBC was being substantially overcharged for retail energy. *Id.* ¶ 10. On December 14, 2018,
4 Mr. Blunt had a call with Mr. D’Amico and Dylan Savidge of PG&E, during which Mr. Blunt
5 again explained the issue and requested that PG&E review and revise the estimates of retail
6 demand under the Special Agreement. *Id.*

7 On January 25, 2019, TBC’s in-house counsel, Mr. Gardner, notified PG&E in writing
8 “that TBC is aware of material modification to the retail loads at both its converter stations as a
9 result of new information regarding the retail load demands. TBC has installed meters at both its
10 facilities to track previously unmetered retail load and compared those outputs with those utilized
11 in Attachment A to the Special Agreement. Based on TBC’s calculation, from March 2018 to
12 current, TBC has overpaid the Monthly Retail Adder by an estimated total sum of \$154,000 and
13 formally requests a refund of the overpayment.” Gardner Decl. Ex. 3. TBC further stated that it
14 was “open to any review and other inspections as required by the Special Agreement for the
15 verification of its findings.” *Id.*

16 In an email exchange spanning the period from December 2018 to February of 2019, Mr.
17 Blunt sent to PG&E representatives certain line drawings and technical information regarding the
18 meters installed by TBC. Blunt Decl. ¶ 11 & Ex. 6. Mr. Savidge of PG&E responded: “I just
19 spoke with our metering engineer. He has reviewed the metering information and single lines and
20 feels that we can work with this. He would like to visit both sites and it looks like he’s available
21 the week of February 25.” *Id.*

22 On April 9, 2019, Messrs. D’Amico and Savidge of PG&E visited the Pittsburg Converter
23 Station to inspect and verify the meter installed by TBC. *See id.* ¶ 12. After discussing the matter
24 with Mr. Blunt and reviewing the meters installed by TBC, Messrs. D’Amico and Savidge
25 acknowledged that the Estimated Retail Demand figures in the Special Agreement overstated
26 TBC’s actual retail energy consumption. *Id.* They stated, however, that due to technical
27 incompatibilities between PG&E’s technology and TBC’s meters, PG&E would not be able to
28 draw usage data from TBC’s meters for purposes of calculating retail load. *Id.* Mr. Blunt

1 discussed potential workarounds with them, including installation by PG&E of its own meters at
2 the Converter Stations. *Id.* The PG&E representatives informed Mr. Blunt that they would look
3 into such solutions. *Id.* On September 13, 2019, Mr. Blunt followed up with another email to
4 Messrs. D'Amico and Savidge, asking “how your meter department is doing with regards to our
5 meter solution, and if they are able to integrate with out [sic] meters?” *Id.* ¶ 13 & Ex. 7. PG&E
6 never responded. *Id.* ¶ 13.

7 Thus, notwithstanding its acknowledgment that the Estimated Retail Demand in the
8 Special Agreement materially overstates TBC’s retail usage, PG&E continues to bill TBC (and
9 TBC continues to pay such bills) based on the inflated estimate of retail consumption set forth in
10 the Special Agreement. *See* Blunt Decl. ¶ 8 & Ex. 4. Nor has PG&E agreed to refund TBC for
11 overpayments made pursuant to the outdated methodology set forth in the Special Agreement,
12 despite TBC’s formal request for a refund.

13 Exhibit 4 to the Blunt Declaration displays (i) the amount invoiced by PG&E (and paid by
14 TBC) for each month from July 2018 to April 2020; and (ii) the estimated amount that TBC
15 should have been charged for retail energy based on its actual metered usage for each of the same
16 months. Overall, Exhibit 4 shows that TBC has overpaid PG&E by an estimated total of
17 \$270,760.76 during the period from July 2018 to April 2020.³

18 **C. The Cure Notice**

19 On May 1, 2020, PG&E filed the Cure Notice. Although the Special Agreement is not
20 listed on the Cure Notice,⁴ Section 8.1 of the Plan provides that “[a]s of, and subject to, the
21 occurrence of the Effective Date and the payment of any applicable Cure Amount, all executory
22 contracts and unexpired leases of the Reorganized Debtors shall be deemed assumed” (subject to
23 certain exceptions not applicable here). Plan § 8.1(a). Accordingly, it is TBC’s understanding

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25 ³ TBC does not yet have billing or metering data available for the month of May 2020. Any
26 overpayments made in May 2020 and subsequent months must also be refunded in connection
with assumption of the Special Agreement.

27 ⁴ Two other contracts for which TBC is listed as the counterparty are listed on the Cure Schedule
28 (a “Special Facilities Agreement” and an “Interconnection Agreement,” each dated June 1,
2007). This cure objection does not pertain to those two contracts.

1 that PG&E proposes to assume the Special Agreement as of the Effective Date with no cure
2 payment.⁵

3 II. ARGUMENT

4 Bankruptcy Code section 365(b)(1) provides, in pertinent part, that “[i]f there has been a
5 default in an executory contract or unexpired lease of the debtor, the trustee may not assume such
6 contract or lease unless, at the time of assumption of such contract or lease, the trustee … cures, or
7 provides adequate assurance that the trustee will promptly cure, such default” and “compensates,
8 or provides adequate assurance that the trustee will promptly compensate, a party other than the
9 debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such
10 default” 11 U.S.C. § 365(b)(1).

11 Here, PG&E is in default under the Special Agreement. By its letter of January 25, 2019,
12 TBC notified PG&E of a “material modification to the retail loads at [both] converter station[s].”
13 *See* Special Agreement § 3; Gardner Decl. Ex. 3. The Special Agreement provides that upon
14 receipt of such notification, the Parties “**shall** review and agree in writing to updates to the
15 calculation of the Estimated Retail Demand for each or either converter station.” Special
16 Agreement § 3 (emphasis added). Following its visit to the Pittsburg Converter Station, PG&E
17 did not dispute the existence of a “material modification” to the retail load. Indeed, PG&E
18 acknowledged that TBC is being substantially overcharged based on the Estimated Retail Demand
19 set forth in the contract. Nevertheless, PG&E has been non-responsive to TBC’s repeated efforts
20 to reach agreement on “updates to the calculation of the Estimated Retail Demand.” Special
21 Agreement § 3.

22 As a result of PG&E’s failure to comply with the Special Agreement, PG&E has
23 overcharged TBC by an estimated \$270,760.76. Blunt Decl. Ex. 4. PG&E cannot assume the
24 Special Agreement unless it (i) agrees to update the calculation of Estimated Retail Demand under
25 the Special Agreement for all purposes going forward, and (ii) compensates TBC for the
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27 ⁵ Counsel for TBC contacted counsel for PG&E on May 8, 2020 to discuss a potential consensual
28 resolution of this dispute. PG&E’s counsel did not provide a substantive response, thus
necessitating this objection.

1 \$270,760.76 pecuniary loss (plus any overcharging that occurs in May 2020 or subsequent
2 months) it has suffered as a result of PG&E's failure to comply with the Special Agreement. 11
3 U.S.C. § 365(b)(1).

4 **III. CONCLUSION**

5 WHEREFORE, TBC respectfully requests that the Court condition assumption of the
6 Special Agreement on PG&E's cure payment of \$270,760.76 to TBC.

7 DATED: May 15, 2020

/s/ *Samuel M. Kidder*

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